

1 if true, could entitled Defendant to relief, an evidentiary
2 hearing should be held. See Vaillancourt v. Warden, 90 Nev. 431,
3 432 (1974) and Hatley v. State, 100 Nev. 214, 217 (1984)("An
4 evidentiary hearing was necessary to determine the truth of
5 appellant's alternate contention that even if the arresting
6 officers were aware of the existence of the misdemeanor bench
7 warrant at the time of appellant's arrest, they were nevertheless
8 using it as a pretext to arrest appellant on a burglary charge").

9 Federal cases decided by the United States Court of Appeals
10 are in accord with Hatley. In United States v. Espinoza, 866
11 F.2d 1067, 1069 (9th Cir. 1988), the court said, "this court has
12 held on several occasions that when the prisoner's allegations of
13 a coerced plea are based on alleged occurrences outside the
14 record, an evidentiary hearing is required."

15 DAVIS has alleged that his understanding of the plea bargain
16 was not what the record reflects and, in addition, has alleged
17 that officers read him his rights after he was questioned (proper
18 person petition exhibit P-1 at page 17). If these allegations
19 are true, petitioner would be entitled to relief.

20 To meet the first prong of the two part test under
21 Strickland v. Washington, 466 U.S. 668 (1968), defendant must
22 show that counsel's advice was not within the range of competence
23 demanded of attorneys in criminal cases. See Hill v. Lockhart,
24 474 U.S. at 56 (quoting McMann v. Richardson, 397 U.S. 771).

25 Here, the attorney failed to note his client was a juvenile
26 and failed to move to dismiss an improper robbery charge.

27 To meet the second prong of the test, defendant must show
28 that there is a "reasonable probability that, but for counsel's

1 errors, defendant would not have pleaded guilty and would have
 2 insisted on going to trial." Hill v. Lockhart, 474 U.S. 52
 3 (1985).

4 Here, DAVIS alleged that his attorney failed to remove the
 5 prime reason for his guilty plea: the wrongful robbery charge,
 6 failed to investigate the case sufficiently to learn defendant's
 7 age, and failed to interpose a motion to dismiss which any
 8 attorney of competence would have interposed. Under those
 9 circumstances, since defendant's proper person petition states he
 10 would "plead anew," it would mean he would plead not guilty.

11 Thus, Defendant is entitled to an evidentiary hearing.

12 CONCLUSION

13 Wherefore, counsel requests that Mr. Davis be scheduled for
 14 an evidentiary hearing during which counsel can quickly question
 15 the arresting officers and defendant. Counsel also requests that
 16 his client be released for being unlawfully deprived of a direct
 17 appeal.

18 DATED: 10-13-99

19 By: 

20 ANDRES RAPPARD, ESQ.,
 21 Attorney at Law
 22 Nevada Bar Number 003892
 23 ANDRES R. RAPPARD, CHTD.,
 24 A Professional Corporation
 633 South Fourth Street, Suite 8
 Las Vegas, Nevada 89101
 (702) 388-1772
 Attorney for Defendant
 JIMMIE DAVIS

25 CERTIFICATE OF SERVICE BY MAIL

26
 27 I, Michael J. Sullivan, hereby certify that I am an employee
 28 of the Law Offices of Andres Rappard and that on October 13,

1 1995, I mailed a true copy of the foregoing to:

2 Mr. Melvyn T. Harmon,
3 Chief Deputy District Attorney
4 200 South Third Street
5 Las Vegas, Nevada 89155

6 by placing said copy in the "D.A." incoming mailbox located at
7 the office of the District Court Clerk for the County of Clark.

8 DATED: 12-1-95

9 -----

Case No. C85078

Dept. No. IV

DOCKET C

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

JIMMIE DAVIS,

Petitioner,

v.

WARDEN E.K. McDANIEL,

OF ELY STATE PRISON,

Respondent.

PETITION FOR
WRIT OF HABEAS CORPUS
(POST-CONVICTION)

DATE OF HEARING:

TIME OF HEARING:

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed.

POLICE DEPARTMENT
City of North Las Vegas
1301 East Lake Mead Blvd.

Date: 08-01-88

PRIOR TO ANY QUESTIONING, YOU MUST UNDERSTAND THE FOLLOWING RIGHTS

1. You have the right to remain silent.
 2. Anything you say can be used against you in a court of law.
 3. You have the right to the presence of an attorney prior to any questioning.
 4. If you cannot afford an attorney, one will be appointed to you prior to any questioning if you so desire.
- If you wish to waive all of the above rights, and answer questions now without an attorney present, you have the right to stop answering questions at any time during the interview.
- DO YOU UNDERSTAND FULLY WHAT YOU HAVE BEEN TOLD: Ans: Yes Sign: Jimmie Davis

WAIVER

I can read and write the English language and I have read and understand the statement of my rights as shown above. I understand that I have the right to remain silent, that anything I say can be used against me in a court of law, that I have the right to the presence of an attorney before any questioning, that if I cannot afford an attorney one will be appointed to me prior to any questioning, if I so desire.

I hereby waive my rights as shown above and I am willing to answer questions and make a formal statement.

I understand and know what I am doing. No promises or threats have been made to me and no pressure of any kind has been used against me.

Witness: [Signature]Signed: Jimmie Davis

Witness: _____

I, Jimmie Davis, first having been duly informed of my rights by Det. Adams, as shown above, do hereby make the following statement freely and voluntarily and without promises of immunity or reward. My name is Jimmie Davis. I am 16 years of age. I reside at West Webb B. my phone number is 649-7270.

I'm Det. Adams, I'm investigating a homicide that occurred on 07-31-88 at 25 Britz #B. I'm interviewing Jimmie Davis, black male, sixteen years old. Also in the interview is Jimmie Davis's uncle, Webster Davis. Jimmie, at approx. 5:15 PM last date would you tell us where you were at?

A: at the apt. 25 Britz Cir #B where the woman was shot.

Q: Would you tell us who was in the apt. with you?

A: Arthur, Ringo.

Q: Do you know Arthur's last name?

A: I don't know his last name?

Q: Does he have a nickname?

A: Yes, Junior. X 1

EXHIBIT C

Jimmie Davis- 1 -

311

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you are imprisoned or restrained of your liberty. One copy must be mailed to the respondent, one copy to the attorney general's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

(8) This form is not intended to, and does not, preclude your right to file for post-conviction relief in the district court for the county from which you were convicted in the State of Nevada under the provisions of NRS 177.325. You will be precluded, however, from filing a petition pursuant to chapter 177 of NRS if you do not file it within 1 year after your conviction or decision on appeal and cannot show good cause for failing to file within that time. You are precluded from filing a habeas corpus petition pursuant to chapter 34 of NRS if you do not first challenge your conviction or sentence by filing a petition pursuant to chapter 177 of NRS.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY STATE PRISON, WHITE PINE COUNTY

2. Name and location of court which entered the judgment of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT DEPARTMENT IV, LAS VEGAS NEVADA

3. Date of judgment of conviction: DECEMBER 12, 1988

4. Case number: C85078

5. (a) Length of sentence: LIFE WITHOUT THE POSSIBILITY OF PAROLE.

(b) If sentence is death, state any date upon which execution is scheduled: X

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this Motion?

Yes _____ No X

1 If "yes," list crime, case number and sentence being served at
 2 this time: X

3
 4
 5 7. Nature of offense involved in conviction being challenged:
 6 FIRST DEGREE MURDER/ROBBERY WITH THE USE.

7
 8 8. What was your plea? (check one)

9 (a) Not guilty___ (b) Guilty X (c) Nolo contendere___

10 9. If you entered a guilty plea to one count of an indict-
 11 ment or information, and a not guilty plea to another count of an
 12 indictment or information, or if a guilty plea was negotiated,
 13 give details: Defendant pled guilty to first degree murder
 14 and stipulate to life without the possibility

15 of parole in return for the robbery to be dropped

16 10. If you were found guilty after a plea of not guilty, was
 17 the finding made by: (check one)

18 (a) Jury___ (b) Judge without a jury___

19 11. Did you testify at the trial? Yes___ No___

20 12. Did you appeal from the judgment of conviction?

21 Yes___ No___

22 13. If you did appeal, answer the following:

23 (a) Name of court:___

24 (b) Case number or citation:___

25 (c) Result:___

26 (d) Date of result:___

(Attach copy of order or decision, if available.)

27 14. If you did not appeal, explain briefly why you did not:

28

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motion with respect to this judgment in any court, state or federal?

Yes X No

16. If your answer to No. 15 was "yes," give the following information:

(a) (1) Name of court: DISTRICT COURT CLARK COUNTY NEVADA
Department IV/ In the supreme court of the state of Nevada.

(2) Nature of proceeding: Petition for post conviction relief
motion to vacate sentence.

(3) Grounds raised: Plea of guilty was not knowingly and voluntarily entered
petitioners sentence of life without was violative
of the cruel and unusual punishment/ineffective assistance of
counsel.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No X

(5) Result: Denied

(6) Date of result: March 25, 1992

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: None known

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: DISTRICT COURT CLARK COUNTY DEPT IV

(2) Nature of proceeding: MOTION TO VACATE SENTENCE

(3) Grounds raised: defendants presence report contained
materially inaccurate information.

(4) Did you receive an evidentiary hearing on your petition,
 application or motion? Yes _____ No X

(5) Result DISMISSED

(6) Date of result: 7/3/95

(7) If known, citations of any written opinion or date of
 orders entered pursuant to each result: N/A

(c) As to any third or subsequent additional applications or
 motions, give the same information as above, list them on a
 separate sheet and attach.

(d) Did you appeal to the highest state or federal court
 having jurisdiction, the result or action taken on any petition,
 application or motion?

(1) First petition, application or motion? Yes X No _____

Citation or date of decision: 1/24/94

(2) Second petition, application or motion? Yes _____ No X

Citation or date of decision: X

(3) Third or subsequent petitions, applications or motions?

Yes _____ No _____

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any
 petition, application or motion, explain briefly why you did not.
 (You must relate specific facts in response to this question.
 Your response may be included on paper which is 8 1/2 by 11 inches
 attached to the petition. Your response may not exceed five hand-
 written or typewritten pages in length.)

HAD TO FILE WRIT OF HABEAS CORPUS WITHIN ONE YEAR.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, post-conviction relief pursuant to chapter 177 of NRS, motion or application? If so, identify:

(a) Which of the grounds is the same: INEFFECTIVE ASSISTANCE OF COUNSEL.

(b) The proceedings in which these grounds were raised: POST CONVICTION RELIEF.

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten pages in length.)

To have issue decided on its merits now presented before the court.

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

Plea induced by prosecuting attorney through coercion, trickery threats. Const. violation. Conviction obtained by use (contd. pg. 10)

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

1. Petitioner filing within one year of judgement by the Nevada
 2. suprem court

3. 20. Do you have any petition or appeal now pending in any
 4. court, either state or federal, as to the judgment under attack?

5. Yes No x

6. If yes, state what court and the case number:

8. 21. Give the name of each attorney who represented you in
 9. the proceeding resulting in your conviction and on direct appeal:

10. (David Gibson/Stephen Dahl/public defender) Elizabeth McMahon

11. Mark B. Bailous

12. 22. Do you have any future sentences to serve after you com-
 13. plete the sentence imposed by the judgment under attack?

14. Yes No x

15. If yes, state what court and the case number:

16. 23. State concisely every ground on which you claim that you
 17. are being held unlawfully. Summarize briefly the facts supporting
 18. each ground. If necessary you may attach pages stating additional
 19. grounds and facts supporting same.

20. (a) Ground one: Plea induced by prosecuting attorney

21. through coercion, trickery, and threats. Const violation.

22. Supporting FACTS (Tell your story briefly without citing cases
 23. or law.): Supporting facts on record, prosecuting statements page

24.) A plea of guilty can not stand where it (continued PG 11)

25. (b) Ground two: Ineffective assistance of counsel a sixth
 26. Amendment violation.

27. Supporting FACTS (Tell your story briefly without citing cases
 28. or law.): Petitioner was denied effective assistance of counsel

1 from preliminary hearing to the sentencing. (continued page 14)
 2

3 (c) Ground three: Conviction obtained by use of illegally
 4 and corced confession. Miranda violation.

5 Supporting FACTS (Tell your story briefly without citing cases
 6 or law.): Petitioner was never read his miranda rights prior to
 7 his arrest. defendant was arrested on august 1, (continued page 17)
 8

9 (d) Group four: _____
 10

11 Supporting FACT (Tell your story briefly without citing cases
 12 or law.): _____
 13
 14

15 WHEREFORE, petitioner prays that the court grant petitioner
 16 relief to which he may be entitled in this proceeding.

17 EXECUTED at _____ on the _____ day of
 18 _____, 19____.
 19

20 _____ Signature of aorney (if any) _____ Signature of petitioner
 21

22 _____ Attorney for petitioner _____ Address
 23

24 _____ Address
 25

25 VERIFICATION

26 Under penalty of perjury, the undersigned declares that he
 27 is the petitioner named in the foregoing petition and knows the
 28 contents thereof; that the pleading is true of his own knowledge,

except as to those matters stated on information and belief, and
as to such matters he believes them to be true.

Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, _____, hereby certify pursuant to
N.R.C.P. 5(b), that on this _____ day of _____,
19____, I mailed a true and correct copy of the foregoing PETITION
FOR WRIT OF HABEAS CORPUS addressed to:

To MS LORETTA BOWMAN
200 SOUTH THIRD STREET
P.O.BOX 551601
LAS VEGAS, NV 89155-1601

Warden E.K. McDaniel
Respondent Prison or jail official
P.O.BOX 1900 E.S.P
ELY NEVADA 89301

Address

Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, Nevada 89710

Stewart L. Bell
District Attorney of County of Conviction
200 S THIRD ST STE 701
PO BOX 552212
LAS VEGAS NV 89155-2212

Address

Signature of Petitioner

1 (continued fr page 6-Q)

2 of illegal obtained confession. miranda violation.

3 Filling to exhaust state remedies filed within 1 year of judg-
4 ment by the Nevada supreme Court that court appointed attorney
5 Mark B. Bailous would not raise but told defendant to raise them
6 on habeas Corpus petition within one year of judgement to exhaust
7 state remedies" so that you may proceed to federal court.

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SUPPORTING FACTS FOR GROUND I

(continued from page 7-A) is the coercion by the state: State told defendant if you plead guilty I will drop the robbery and will not pursue it any further but you must stipulate to the sentence of life without the possibility of parole but what he did not disclose was that defendant was illegally charged with robbery charge because he knew if robbery was used and to have been used in the plea negotiations the plea has been tainted, supported by states attorneys statements on record ID page 23.

Attorney for the state dropped robbery at the plea hearing and said it is not even considered but attorney for the defendant contradicts this on record when he states, My understanding was your honor, is that the state will not go down and try to certify our client on the robbery charge and bring him back those charges will not be pursued any further ID page 24/25. Counsel for the defendant states this on Record.

Attorney for the state says that I do believe that counsel for the defendant will agree on the record that dismissal of count II in no way has anything to do with the negotiations and is not consideration. Counsel for the defendant never agrees to this on record before the judge dismisses the charge ID page 24. Because this was not true counsel told defendant that the negotiations were, he plead guilty and the robbery will be dropped and he stipulate to life without the possibility of parole and it will not be pursued any further. Counsel never agreed to this on record because he was under the same impression that the defendant was THAT the robbery was apart of the plea negotiations. which leaves the record bare of which plea agreement the defendant plead to the one proposed by the states attorney or the one proposed

1 by the defendants counsel?

2 When the sentencing judge heard this he should have inquired
3 deeper into the facts of wheather or not the robbery was used to
4 induce plea threats of futher procecution or was the robbry
5 not apart of the plea agreement and had defendants counsel
6 stipulate to this on record. Sentencing judge must develope
7 on record the factual basis for the guilty plea when it rest
8 in any signifcants degree on a promise or agreement made by the
9 prosecutor, the essence of those promises must in some way be
10 made known so that the judge knows that it was not unfairly
11 obtained because if the defendant has been tricked by the proce-
12 cution through mis representation into pleading guilty then his
13 due process rights of the united states constitution has been
14 violated. Threatening to bring additional prosecution which is
15 clear renders plea voidable,prosecutor undercuts the basis for
16 the waiver of Constitutional rights implicit in the plea when
17 he makes fals statement on record. The most meticulous standards
18 of both promi : and performance must be met by prosecutors en-
19 gaging in plea bargaining, contradictory or confusing statements
20 of the law are not adquate when defendant is giving up precious
21 rights gareenteed by the United States Constitution.

22 The court should not have accepted the plea in light of the
23 misunderstanding which obviously existed of wheather defendant
24 was threatend with futher future prosocution or was the robbrey
25 not considered. It is clear however from ccounsels statements
26 on record that the robbry was apart of the plea negotiations.

27 There shOuld have been futher consulting with the court and
28 procecutor and the defendants counsel in an effort to arrive at

1 an agreeable and legal plea negotiations after which the defend-
2 dant should have been able to inform the court as to the course
3 of action he wishes to take. It is the defendants rights who are
4 being violated when the plea agreement is broken or meaningless,
5 IT is his waiver which must be voluntary and knowing, He offers
6 that waiver not in exchange for the actual sentence or impact
7 on the judge but for the prosecutors statements in court, if
8 they are not adequate the waiver is ineffective and a violation
9 of the United States Constitution. A plea of guilty shown to be
10 unfairly obtained or giving through ignorance, fear, coercion,
11 and or trickery can be vacated by the court.

12 For the grounds the defendant has set befor the court the
13 defendant Prays and hopes that the court will vacate the plea
14 and give the petitioner the opportunity to plead anew.

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SUPPORTING POINTS FOR GROUND II

1 (continued from page 7-8) At preliminary hearing counsel told
 2 attorney for the state that defendant was 18 when in fact he
 3 was 16 and because of this the attorney for the state proceeded
 4 against defendant with an amended complaint charging defendant
 5 with robbery with the use of a deadly weapon and defendant was
 6 held to answer (ID page 23 attorney for the state statements
 7 on record) : Before I describe the negotiations I should inform
 8 the court that I do NOT believe that he is properly charged with
 9 robbery with use of a deadly weapon. At preliminary hearing
 10 stage I initially believed him to be 16. One of his attorneys
 11 inadvertently told me he was 18. Because of that I proceeded
 12 against him with an amended complaint charging him with robbery
 13 with the use of a deadly weapon and he was held to answer.)

14 For three months defendant stood charged illegally with
 15 robbery in adult court. Counsel cannot have done any investi-
 16 gation into defendant's case if he told attorney for the state
 17 this at preliminary hearing as the attorney for the state states
 18 on record this fact.

19 If counsel would have at least read defendant's statements
 20 to police which was used in and at preliminary hearing he would
 21 have known that defendant was 16 because it says this right on
 22 top (ID page 2). Counsel's statement no matter how inadvertent
 23 did not lessen its impact because illegally charged robbery was
 24 used in plea negotiations (ID page 24/25 Counsel's statements:

25 Mr. Dahl: That's correct, this plea is being made pursuant to
 26 NRS 174.065, the party agrees to a degree of crime if there's
 7 separate degrees of crime, and also in the case of murder sti-
 pulate to a punishment less than death. And the other under-

1 standing is your honor that the state will not go down and try
2 to certify our client on the robbery and bring him back .those
3 charges will not be pursued any futher.)

4 These statements took place October 12 1988 2 and a half
5 months after counsel gave false statement to Attorney for the
6 state. In this time period of two and a half months no motions
7 were filed to correct defendant from being charged in adult
8 court with the robbery charge when counsel knew defendant was
9 only 16 because he came to visit him in juvenile tank in the
10 county jail but he still did nothing but let the underlying
11 felony hang above defendants head then be used in plea negotia-
12 tion which tainted plea, defence counsel as well as prosecution
13 counsel must know or learn about relevant law and evaluate its
14 application to his client with respect to plea bargain and
15 failure to do so will amount to constitutionally ineffective
16 assistance of counsel and undermine validity of plea.
17 Counsel never told defendant that he was illegally charged
18 with robbery. He had told defendant this and or filed motions
19 he would not have been coerced tricked and threatened by state
20 to induce plea, he would have been given the opportunity to
21 fight certification and have robbery taken to juvenile court
22 or dropped by the state adult court when defendant had no violent
23 charges from the past or never being committed to Elko or
24 Spring mountain youth authority this possibility of defence was
25 there (ID page 23/24 attorney for the state statements on record:
26 (and as I understand the law now although a person of any age can
27 originally be charged in adult court with murder ,for any other
28 crime even if committed during the murderous transaction he

1 has to be originally charged in juvenile court ,

2 THE COURT He has to be certified .)

3 Counsel's performance was deficient, counsel made errors so
4 serious that counsel could not have been functioning as the
5 counsel guaranteed the defendant by the sixth amendment if not
6 for these errors the end result of defendant's case would have
7 been different because he would have not pleaded guilty and
8 stipulated to life without the possibility of parole, when a
9 plea agreement is discussed and hence sentencing becomes the
10 client's preeminent concern, it is incumbent on counsel to
11 acquaint himself with all the available alternatives and their
12 consequences for the defendant's liberty and rehabilitation.
13 Counsel's lack of knowledge here is inexcusable.

14 Counsel failed to object when attorney for the state said
15 on record that the robbery was not apart of the plea negotiations
16 and is not considered (ID page 24) defendant's statements on -
17 record contradicts this (ID page 25). Counsel has duty to
18 consult with defendant on important developments and decisions
19 in the course of the prosecution. Had counsel done this the
20 robbery would not have been used to induce plea.

21 Counsel cannot even be have said to know if defendant can
22 read or write, when he said to court that he only had two years
23 of schooling (ID PAGE 27) This should have been a factor but
24 was not. Defendant was not even given a psychological evaluation
25 giving his age and the severity of the crime this should have
26 applied but was not.

SUPPORTING MOTTS FOR GROUND III

1 (continued from page 8-C) 1988 prior to his arrest Defendant
2 was not read his Miranda rights which constituted a violation
3 of his fifth amendant right. Defendant was taken into one room
4 where he was questioned with his uncle Webster leonard davis he
5 then was taken into another room where where no Miranda rights
6 were read just like in the previous room except in the second
7 room there was a typest present and his uncle, he then was que-
8 stioned further and the typest typed everything that was said,
9 the defendant and his uncle were then taken to the room from
10 which they had started where they were asked to sighn by the X
11 and after this was done the defendant was then **read** his rights
12 and placed under arrest and asked to empty his pockets, defendant
13 was not read his rights and ~~was~~ not told that his statements
14 would lead to adult procecution in adult court. The next day
15 defendant asked a black female gaurd when was he going to juvenil
16 she in return asked him how old he was and the defendant replied
17 16 she said you are not going to juvenile and walked off sing-
18 ging a church song The defendant asked the court for a discovery
19 as to the female gaurd of african american nature who worked the
20 mornning of august 2, 1988. The courts have held that it was
21 entirely unrel stic to carve out the fifth amendment and all
22 statements by juvenils on the ground that these could not lead
23 to criminal involvement the court thus granted juveniles the
24 protection of adult statues. Before any questions can be asked
25 defendant is to be **read** his miranda rights, in this case before
26 the court this was not done and defendant should be afforded
27 the oppertunity to call these witnesses to testify in the court
28 of law as to these facts and to bring in a lye detector machine

1 for the arresting officer, defendant, and Webster Leonard Davis.

2 There is the question of: DO YOU UNDERSTAND FULLY WHAT YOU
3 HAVE BEEN TOLD,) AT THE top of the waiver, then you are to sign
4 YES or NO THE YOUR NAME, the defendant signed his name but he
5 did not sign as that he understood, the detective signed yes
6 (ID Page 26 the defendant did not because he did not under-
7 stand. The defendant can prove in the court of law that he did not
8 sign YES or anything else but his name for a fact. Now this was
9 truly illegal for the detective to do because it is the defen-
10 dant who is giving up the rights not the detective.

11 A guilty plea cannot stand when it is obtained by use of an
12 illegally obtained confession. The detective testified that he
13 took the whole statement in one room but this was false because
14 Karen Payn sat and watched them go from one room to the other
15 and back again and can testify to this fact along with the defend-
16 ants uncle who was in each room with the defendant.

DISTRICT COURT
CLARK COUNTY, NEVADA

JIMMIE DAVIS
Petitioner
v.

CASE NO.C85078
DEPT.NO IV
DOCKET "C"

THE WARDEN OF ELY STATE
PRISON E.K.MCDANIEL
Respondent

AFFIDAVIT IN SUPPORT OF
MOTION FOR WRIT OF HABEAS CORPUS

I JIMMIE DAVIS DO HEREBY swear under the penalty of perjury
that the assertions of this affidavit are true:

1 I am the above defendant in the entitled action.

2 I make this affidavit in support of my motion for writ
of habeas corpus.

3 That petitioner is competent to testify and therefore
would be able to do so if called upon to testify in the court of
law.

4 That petitioner is entitled to the relief sought.

5 That petitioner makes this affidavit in good faith.

6 That petitioner was denied due process of law

7 That petitioner was denied the effective assistance
of counsel at preliminary, during plea negotiations, and plea
hearing. counsel never explained to petitioner that the robbery
was not apart of the plea negotiations and that petitioner
was illegally charged.

8 that counsel was ineffective because he never talked to
defendants until about how the arrest was done and or if any
rights were read to defendant.

1 9 That defendant was not read his rights prior to his statements
2 to police.

3 10 That defendant was taken into one room with his uncle and que-
4 stioned where no rights were read, he then was taken into another
5 room where on the way in the hallway his uncle spoke to a Karen
6 Payn who came with him and said they would be ready to go in a
7 minute because she had some personal business to attend to so
8 she sat on the chair while they went into another room where a
9 female typed every thing that was said and no rights were read in
10 this room either, they then were taken into the original room again
11 where the defendant was asked to sign by the X and then read his
12 rights and to empty his pockets he was under arrest for murder. he gave the contents to his uncle and was cuffed.

13 11 Webster Leonard Davis and Karen Payn can testify to these facts
14 because Webster Davis was with the defendant and Karen Payne was
15 in the hallway waiting for them and watched them go from one room
16 to the next, during which she talked to Leonard Davis.

17 12 Defendant did not know he was being charged in adult court
18 with crime because the next day in the morning he asked a black
19 female guard when was he going to juvenile and she asked him how
20 old he was and he told her he was 16 and she said you are not
21 going to juvenile and walked off singing a church song.

22 13 That counsel was ineffective when he failed to explain that he
23 was illegally charged with the underlying felony of robbery.

24 14 That defendant was denied effective assistance of counsel
25 when counsel gave false statement to attorney for the state

26 about defendant's age and he was held to answer for the ro-
27 bbery charge in adult court when he was supposed to be charged

28 in juvenile court or certified as to the robbery charge.

facts supported by the record and to all witnesses that should
be called to testify.

1 15 That defendant was told robbery would be dropped in return
2 for his plea of guilty and it is apart of the plea negotiations

3 16 That the record is bare of which plea agreement defe-
4 ndant pled guilty to , the one the attorney for the state
5 proposed or the one proposed by the defendants counsel

6 17 Attorney for the state misled defendants counsel and
7 defendant with a false plea agreement and by stating on record
8 that robbery had nothing to do with the plea negotiations when
9 counsel for the defendant contradict this on record.

10 18 That if counsel would have at least read the defendants
11 statements to the police at the preliminary hearing he would
12 have known that defendant was 16 because statement says it right
13 at the top therefore counseles ineffectiveness made him unable
14 to make reasonable decisions for the defendants case when he
15 let defendant answer to the robbery charge in adult court.

16 19 That defendant believed he was rightfully charged with
17 robbery and would not have pleaded guilty if he would have
18 known he was illegally charged with the robbery

19 20 Attorney for the state and attorney for the defendant
20 coerced defendant into pleading guilty by letting the under
21 lying felony hang above defendants head for which he was
22 illegally charged for 3 to 4 months and then used in plea nego-
23 tiations.

24 21 That plea cannot stand when it is induced by coercion
25 trickery, or false promises made by the state or counsel for
26 the defendant.

27 22 That defendant was told that prosecution will not per-
28 sue robbery charge further and it is apart of the plea agree-

1 ment and negotiations in return for his plea of guilty.

2 23 that on the signed waiver at the top where it says DO YOU
3 UNDERSTAND FULLY WHAT YOU HAVE BEEN TOLD THAT THE DEFENDANT
4 DID NOT write the word yes and the detective did when he cannot
5 do this because he is not the one giving up his rights.

6
7 JIMMIE DAVIS 27362

8
9 I the undersigned, hereby declare under under the penalty
10 of perjury, pursuant to NRS 208.165, that the forgoing is true
11 and correct.

12 Executed this _____ DAY OF _____ 1995 at Ely state prison.

13
14
15 JIMMIE DAVIS 27362
16 P.O.BOX 1989 (ESP)
17 ELY NEVADA 89301

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* * * * *

THE COURT: C85087, State of Nevada
versus Jimmie Davis.

The record will show the
presence of the defendant; counsel, Mr. Gibson; Mr.
Jerbic for the State. This matter is on for initial
arraignment.

Did you receive a copy of the
information?

MR. GIBSON: Yes.

THE COURT: Do you wish to have it
read?

MR. GIBSON: No, we will waive that.

THE COURT: All right. Is Jimmie Davis
your true name?

THE DEFENDANT: Yeah.

THE COURT: How much schooling have you
had, Mr. Davis?

THE DEFENDANT: Two years.

THE COURT: Do you read, write, and
understand the English language?

THE DEFENDANT: Yeah.

THE COURT: All right. Have you been

1 LASAS, CLARK COUNTY; WEDNESDAY OCTOBER 12, 1988

2
3 P R O C E E D I N G S

4
5 THE COURT: C85078, Jimmie Davis. The record
6 will show the presence of the defendant, his counsel, Mr.
7 Gibson and Mr. Dahl, and Mr. Henry for the State.

8 Mr. Henry.

9 MR. HENRY: Your Honor, we have a proposed
10 resolution. The defendant right now stands charged in an
11 Information with two counts, murder with use of a deadly
12 weapon and robbery with use of a deadly weapon. Before I
13 describe the negotiations I should inform the court that I
14 do not believe that he is properly charged with robbery with
15 use of a deadly weapon. At the preliminary hearing stage I
16 initially believed him to be 16. One of his attorneys
17 inadvertently told me he was 18. Because of that I
18 proceeded against him with an amended complaint charging him
19 with robbery with use of a deadly weapon and he was held to
20 answer.

21 After he was held to answer I've had
22 discussions with his counsel and conducted some
23 investigation and I believe him to be 16. And as I
24 understand the law now although a person of any age can
25 originally be charged in the adult courts with murder, for

1 any other crime even if it was committed during the
2 murderous transaction he has to be charged originally in
3 juvenile court.

4 THE COURT: He has to be certified.

5 MR. HENRY: Therefore initially I'd move to
6 dismiss Count II and I want the record to reflect and I
7 believe that his counsel will agree on the record that the
8 dismissal of Count II in no way has anything to do with the
9 negotiation and is not consideration.

10 Having said that --

11 THE COURT: That's jurisdictional.

12 MR. HENRY: Yes.

13 THE COURT: I will grant that motion. Count II
14 is ordered dismissed for that reason.

15 MR. HENRY: Having said that, the proposed
16 negotiation would be that the defendant plead to first
17 degree murder without the use of a deadly weapon as a lesser
18 included offense of Count I and stipulate that the
19 punishment for that first degree murder would be life
20 without the possibility of parole in the Nevada State
21 Prison.

22 MR. DAHL: That's correct. This plea is being
23 made pursuant to N.R.S. 174.065, the party agrees to a
24 degree of crime if there's separate degrees of crime, and
25 also in the case of murder stipulate to a punishment less

1 than death. And the other understanding is, Your Honor,
2 that the state will not go down and try to certify our
3 client on the robbery and bring him back. Those charges
4 will not be pursued any further.

5 THE COURT: All right. Mr. Davis, did you hear
6 what's been said?

7 THE DEFENDANT: Yes.

8 THE COURT: And are you in agreement with
9 what's been said?

10 THE DEFENDANT: Yes.

11 THE COURT: Those negotiations, you've
12 discussed these with your lawyers Mr. Gibson and Mr. Dahl?

13 THE DEFENDANT: Yes.

14 THE COURT: And there is no one who is forcing
15 you to do this, to enter a plea of guilty, are they?

16 THE DEFENDANT: No.

17 THE COURT: With respect to Count I is there
18 going to be any amended pleading filed?

19 MR. HENRY: Your Honor, I had not prepared one.
20 I just move to strike the penalty allegation, the penalty
21 enhancement allegation of use of a deadly weapon.

22 THE COURT: That will be the order then.

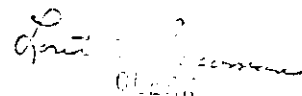
23 As to Count I charging you with murder, what is
24 your plea?

25 THE DEFENDANT: Guilty.

ORIGINAL

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1 **ORDR**
 2 STEWART L. BELL
 3 DISTRICT ATTORNEY
 Nevada Bar #000477
 200 S. Third Street
 Las Vegas, Nevada 89155
 (702) 455-4711
 Attorney for Plaintiff

DISTRICT COURT
 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
 8 Plaintiff,

9 -vs-

10 JIMMIE DAVIS,
 #0854767

12 Defendant(s).

Case No. C85078
 Dept. No. IV
 Docket C

14 **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS**
 15 **(POST-CONVICTION)**

16 DATE OF HEARING: 1-24-96
 17 TIME OF HEARING: 9:00 A.M.

18 THIS CAUSE having come on for hearing on the 24th day of January, 1996, the Petitioner being
 19 present, represented by ANDRES RAPPARD, ESQ., the Respondent being represented by STEWART
 20 L. BELL, District Attorney, by and through DAVID J.J. ROGER, Chief Deputy District Attorney, and
 21 the Court having heard oral arguments of counsel, the Court took this matter Under Advisement. Based
 22 upon the following discussion, Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is
 23 hereby denied.

24 **STATEMENT OF THE CASE**

25 Jimmie Davis, (hereinafter referred to as "Defendant"), was arrested August 1, 1988, in
 26 connection with the shooting death of Brittain Gelabert. A preliminary hearing was held August 25
 27 1988, and Defendant was bound over to District Court. On September 8, 1988, an Information was file
 28 charging Defendant with one count MURDER WITH USE OF DEADLY WEAPON (Felony - NR

1 200.010, 200.030, 193.165); and one count ROBBERY WITH USE OF DEADLY WEAPON (Felony -
2 NRS 200.380, 193.165).

3 On October 12, 1988, following negotiations with the District Attorney, Defendant pled guilty
4 to FIRST DEGREE MURDER and stipulated to Life without parole. On December 20, 1988, Judgment
5 of Conviction (Plea) was entered and Defendant was sentenced to Life in the Nevada State Prison
6 without the possibility of parole.

7 On December 20, 1989, Defendant and appointed counsel, Mark Bailus, filed Defendant's first
8 Petition for Post-Conviction Relief alleging *inter alia*: 1) involuntary entry of guilty plea, and 2)
9 ineffective assistance of counsel. On April 15, 1992, this Court denied Defendant's petition and an appeal
10 was taken. On January 24, 1995, the Nevada Supreme Court dismissed Defendant's appeal in Case No.
11 23338.

12 On September 9, 1995, Defendant filed a second pro per Petition for Writ of Habeas Corpus
13 (Post-Conviction) along with a pro per Motion for Appointment of Counsel. On September 27, 1995,
14 the district court granted Defendant motion to appoint counsel, and subsequently defense counsel filed
15 a First Amended Petition for Writ of Habeas Corpus.

16 STATEMENT OF THE FACTS

17 On July 31, 1988, the Defendant and two (2) friends, Arthur Cullins and Ringo, were located at
18 25 Britz Circle Apt. B, North Las Vegas, Nevada. The apartment has a reputation among residents as
19 a "hangout" for drug transactions and other illicit activities. At about 5:30 p.m., the young men were
20 approached by the victim, Brittain Gelabert, who wanted to sell a .38 caliber Smith and Wesson revolver
21 for \$100.00.

22 Brittain removed the gun and several bullets from her purse and placed them on the counter top.
23 The Defendant picked up the gun, opened the cylinder, loaded it, pointed the gun at Brittain, and
24 demanded she lower the price. To Brittain's detriment, she refused. The Defendant then decided to keep
25 the gun without paying for it and told Brittain to leave. When Brittain again refused, the Defendant shot
26 her (Def's District Court file statement of the Defendant).

27 Forensic Pathologist, Sheldon Green, testified at the Defendant's preliminary hearing that Brittain
28 died from a single bullet wound to the right chest area, fired from "some distance." (Def's Preliminary

1 Hearing Trans. at 27).

2 **DECISION**

3 Ground One, alleges the Defendant's guilty plea was the coerced result of an improperly filed
4 robbery charge. Defendant claims he should be permitted to withdraw his plea because the proceedings
5 were tainted. The voluntary nature of Defendant's plea has previously been decided on the merits and
6 is the Law of the Case. (Exhibit "A" - Order Dismissing Appeal).

7 The Nevada Supreme Court has determined that all claims which have previously been heard and
8 decided on the merits cannot be revisited in a subsequent appeal based on the Doctrine of the Law of the
9 Case. The ruling in the first instance becomes the law of the case for all subsequent proceedings. Hall
10 v. State, 91 Nev. 314, 535 P.2d 797 (1975); Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994)
11 (Law of the Case applies to Petitions for Writ of Habeas Corpus).

12 Also, Defendant's allegation that his guilty plea was the result of an improperly filed robbery
13 charge is contrary to the record. The record clearly states the District Attorney was initially under the
14 mistaken belief that the Defendant was an adult. Once the District Attorney was made aware of the
15 Defendant's correct age, 16, the robbery charge was dismissed for lack of District Court jurisdiction. The
16 District Attorney affirmatively stated the dismissal of said robbery charge was not a part of the
17 negotiations. The State did however acquiesce to an agreement not to pursue said charge in Juvenile
18 Court (Exhibit "B" - Transcript of Def's Plea at 117-119). This course of action is consistent with plea
19 negotiations and Defendant's plea was not the result of improper influence. Schmidt v. State, 94 Nev.
20 665, 666, 584 P.2d 695, 696 (1978).

21 Ground Two, alleges defense counsel was ineffective for failing to file a motion to dismiss the
22 robbery charge which was improperly filed in District Court.

23 The Defendant's argument is meritless because the robbery charge was in fact dismissed by the
24 District Attorney prior to the taking of Defendant's plea and was not a part of the negotiations.
25 Defendant fails to show prejudice or how counsel's performance was deficient and therefore this
26 allegation is dismissed. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Warden v.
27 Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

28 Defendant's pro per petition alleges his conviction was obtained by the use of an illegally coerced

1 confession. In its first response, the State raised the procedural bar of NRS 34.810, which reads:

2 1. The court shall dismiss a petition if the court
determines that:

3 (a) The petitioner's conviction was upon a plea
4 of guilty and the petition is not based upon an allegation
5 that the plea was involuntarily or unknowingly entered
or that the plea was entered without effective assistance
of counsel.

6 (Emphasis added).

7 Defendant's First Amended Petition alleges this court should decide the issue on the merits
8 because procedural bars are not regularly and strictly enforced. Defendant's argument is meritless
9 because procedural bars are routinely enforced. Marshall v. State, 110 Nev. 1328, 1331 n.1, 885 P.2d
10 603, 605 n.1 (1994); Hogan v. State, 109 Nev. 952, 959, 860 P.2d 710, 715 (1993); Phelps v. Director,
11 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988).

12 The decision whether to employ the procedural bar is not a discretionary matter. The plain
13 language of the statute directs that the court "shall" dismiss claims which do not fall within the statute.
14 The State legislative intent is clear. Therefore, this allegation is dismissed.

15 Defendant claims the procedural bar of NRS 34.810 (2) does not apply because the issues
16 presented are sufficiently different. The statute reads:

17 A second or successive petition must be
18 dismissed if the judge or justice determines that it fails
19 to allege new or different grounds for relief and that the
prior determination was on the merits or, if new or
20 different grounds are alleged, the judge or justice finds
that the failure of the petitioner to assert those grounds
in a prior petition constituted abuse of the writ.

21 (Emphasis added).

22 The Court finds that Defendant's allegations are not sufficiently different to justify relitigating the
23 same issues. Further, those issues which are sufficiently different constitute a "piecemeal approach,"
24 Darnell v. State, 98 Nev. 518, 521, 654 P.2d 1009, 1011 (1982), and an abuse of the writ.

25 Over the past seven (7) years, Defendant has been provided every opportunity to fairly contest
26 the validity of his conviction. The Nevada Supreme Court has stated, "At some point, we must give
27 finality to criminal cases" Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). The
28 defendant shall not file another petition for writ of habeas corpus without prior permission of this court.

1 Defendant next alleges his case was prejudiced because he never consented to waive his right to
 2 a direct appeal. Assuming Defendant was denied this right, the Defendant's remedy is to pursue post-
 3 conviction relief, which he has twice been permitted to do. Defendant's contention that he should be
 4 released (Def's First Amend Pet. at 7), is unwarranted and contrary to Nevada Law.

5 A defendant's right to a direct appeal is not constitutional, Castillo v. State, 106 Nev. 349, 792
 6 P.2d 1133 (1990), but statutory, NRS 177.015(3). When a defendant is deprived of this right, review
 7 by the Nevada Supreme Court is lost and prejudice is presumed. Fawaz v. State, 105 Nev. 682, 783 P.2d
 8 425 (1989).

9 Recently the Nevada Supreme Court addressed this very situation in Lozada v. State, 110 Nev.
 10 349, 871 P.2d 944 (1994). The High Court determined the appropriate remedy when a defendant is
 11 denied the right to a direct appeal is to raise any issues, which could have been raised on direct appeal,
 12 in a petition for post-conviction relief. The Court's opinion stated:

13 If [defendant] can establish his claim that he was denied
 14 his right to effective assistance of counsel on appeal,
 15 which had the effect of denying [defendant] his right to
 16 appeal, the appropriate remedy would be to allow
[defendant] an opportunity to raise in a petition for a
writ of habeas corpus any issues which he could have
raised on direct appeal. . . .

17 A complete remedy will exist, however, only if
 18 the district court grants [defendant] counsel to assist
 him in the preparation of a petition for a writ of habeas
 corpus.

19 Id. at 359, 871 P.2d at 950 (emphasis added).

20 The Defendant has twice been permitted to raise issues in petitions for post-conviction relief and
 21 in both instances counsel has been appointed to assist him. Evitts v. Lucey, 469 U.S. 387, 394, 395, 105
 22 S.Ct. 830, 834, 835 (1985). The Defendant has been afforded every right available under Lozada and
 23 his contention that he be released is meritless.

24 The Court has reviewed the record in this case. The Defendant entered into a plea bargain with
 25 the State. He was sentenced by the Court in accordance with the plea bargain.

26 Defendant has failed to identify any additional issues that he would have raised on direct appeal.
 27 Likewise, this Court's review of the record establishes that there are no legitimate issues resulting from
 28 his plea and sentence. Therefore, this claim for relief is denied.

1 Next, Defendant claims that he is entitled to relief because his confession was taken in violation
2 of *Miranda*. The United States Supreme Court has held that a confession taken in violation of *Miranda*
3 v. *Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966) may not be used as substantive evidence against the
4 defendant. However, a *Miranda* violation does not bar further prosecution. *Id.* at 479, 86 S.Ct. at 1630.
5 The Defendant's request for relief is meritless because Defendant waived his right to raise this issue by
6 virtue of his guilty plea. *Cline v. State*, 90 Nev. 17, 518 P.2d 159; *Warden v. Lyons*, 100 Nev. 430, 683
7 P.2d 504 (1984).

8 Also, even if a *Miranda* violation did occur, Defendant is unable to show prejudice because the
9 State never proffered the statement. Defendant's allegation is without legal support and it is hereby
10 dismissed.

11 Defendant's final claim alleges counsel was ineffective for failing to move for dismissal of an
12 improper robbery charge. This allegation is without merit because, as has been previously discussed, said
13 robbery charge was dismissed and was not used by the prosecution as leverage during the plea
14 negotiations (Exhibit "B" - Transcript of Def's Plea at 117-119).

15 Defendant's allegation "that his attorney failed to remove the prime reason for his guilty plea: the
16 wrongful robbery charge" (Def's First Amend Pet. at 9) (emphasis added), is patently disingenuous. In
17 return for Defendant's guilty plea to FIRST DEGREE MURDER, the State agreed not to seek the death
18 penalty and to drop the deadly weapon enhancement. This court finds that is is incredible that
19 Defendant's "prime reason" for negotiating a plea was to avoid a robbery charge when the full extent of
20 the law exposed the Defendant to death penalty, or at least a consecutive life sentence on the use charge.

21 It is readily apparent Defendant is attempting to attack the voluntary nature of his plea because
22 his present circumstances, serving a life sentence without the possibility of parole, suggest he has nothing
23 to lose by playing the "new trial lottery." Such attacks on properly negotiated pleas clog the already
24 burdened judicial calendar and attempt to circumvent justice.

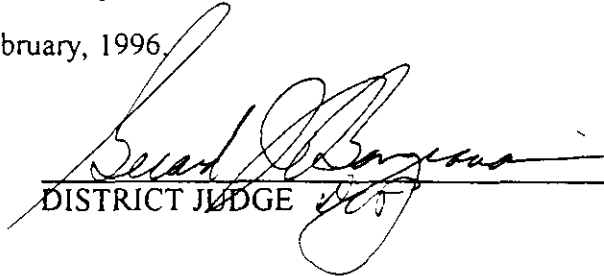
25 Obviously it was the overwhelming evidence of guilt, the possibility of the death sentence, and
26 the deadly weapon enhancement which motivated the Defendant to plead guilty; not the robbery charge.
27 The record is clear that the robbery charged was dismissed prior to the Defendant entering his plea and,
28 despite what he may say from his cell, the evidence clearly indicates he would not have wanted to go to

1 trial. Hill v. Lockhart, 474 U.S. 52, 61, 106 S.Ct 366, 371 (1985); see Warden v. Lyons, 100 Nev. 430,
2 683 P.2d 540 (1984)

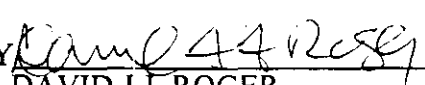
3 ORDER

4 THEREFORE, IT IS HEREBY ORDERED that the Defendant's Petition for Writ of Habeas
5 Corpus (Post-Conviction) shall be, and it is, hereby denied.

6 DATED this 29th day of February, 1996.

7
8 
9 DISTRICT JUDGE

10 STEWART L. BELL
11 DISTRICT ATTORNEY
12 Nevada Bar #000477

13 BY 
14 DAVID J.J. ROGER
15 Chief Deputy District Attorney
16 Nevada Bar #002781
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2 DEPT. NO. I v

3 DOCKET C

FILED

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6 IN THE JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF CHEROKEE

★ ★ ★ ★ ★

9 JENNIS DAVIS)

10 || Petitioner,)

11 | vs. |)

NOTICE OF APPEAL

12 || THE STATE OF NEVADA,)

13	Respondent.)
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15 Notice is hereby given that, JOHN K. DAVIS,

16 Petitioner in the above entitled action, hereby appeals to the

17 Nevada Supreme Court from the District Court's Order denying

18 Petitioner's WRIT OF HABEAS CORPUS, entered in

19 this action on the 24 day of FEBRUARY, 1996.

20 DATED this 3 day of March, 1986.

WILLIE DAVIS 27362

JULIUS DAVIS 21362

PETITIONER IN PRO PER

Ely State Prison

P.O. Box 1989

Ely, Nevada 89301

DATE

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JIMMIE DAVIS 7362
PO BOX 607
CARSON CITY NEVADA
89702

District Court
CLARK COUNTY, NEVADA

JIMMIE DAVIS

Petitioner,

CASE NO. C85078

v

DEPT NO. IV

THE STATE OF NEVADA,

Respondent.

MOTION TO CORRECT ILLEGAL SENTENCE
(NRS 176.555)

COMES NOW THE PETITIONER, JIMMIE DAVIS, IN PROPER PERSON AND
RESPECTFULLY SUBMITS THIS MOTION TO CORRECT ILLEGAL SENTENCE PURSUANT
TO NRS 176,555.

THIS MOTION IS MADE AND BASED UPON THE FILES AND RECORDS OF THE
ABOVE ENTITLED CAUSE OF ACTION AND THE ATTACHED MEMORANDUM OF POINTS
AND AUTHORITIES.

DATED THIS 26 DAY OF AUG 1997.

Jimmie Davis 27362
JIMMIE DAVIS 27362
PO BOX 607
CARSON CITY NEVADA
89702